

# **EXHIBIT 5**

PAGE 1 SHEET 1

DEPOSITION OF SHEILA BURROUGHS  
PAGE 2UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
CIVIL ACTION NO. 04-11522-WGY

STEVEN R. KINCAID, )  
 PLAINTIFF, )  
 VS. )  
 BANK OF AMERICA )  
 CORPORATION, )  
 DEFENDANT. )

## DEPOSITION

OF  
 SHEILA K. BURROUGHS

AT CHARLOTTE, NORTH CAROLINA  
 JUNE 1, 2005

REPORTER: IRA ANDERSON  
 NOTARY PUBLIC

PAGE 3

Ms. Burroughs - Vol. I

3

1 This is the deposition of Sheila K. Burroughs,  
 2 taken in accordance with the Federal Rules of Civil  
 3 Procedure in connection with the above case.  
 4 Pursuant to Notice, this deposition is being  
 5 taken in the offices of Hamilton, Fay, Moon, Stephen,  
 6 Steele & Martin, P.L.L.C., 2020 Charlotte Plaza,  
 7 201 South College Street, Charlotte, North Carolina,  
 8 beginning at 1:47 p.m. on June 1, 2005, before Ira  
 9 Anderson, Notary Public.

10 Sheila K. Burroughs, upon first being duly  
 11 sworn, testified as follows:

12  
 13 Examination by Mr. Fine  
 14 Q. Please state your full name.  
 15 A. Sheila Burroughs.  
 16 Q. Where do you reside?  
 17 A. Charlotte, North Carolina.  
 18 Q. How are you employed?  
 19 A. At Bank of America.  
 20 Q. In what capacity?  
 21 A. I'm currently a customer experience  
 22 relationship manager.  
 23 Q. Do you have any other job titles?  
 24 A. Yes, senior vice president.

MILLER REPORTING SERVICES  
 (704) 543-7103

Ms. Burroughs - Vol. I

2

## APPEARING

FOR THE PLAINTIFF: Mr. David J. Fine  
 LAW OFFICES OF DAVID J. FINE  
 Three Center Plaza, Suite 400  
 Boston, Massachusetts 02108-2003  
 FOR THE DEFENDANT: Mr. Richard T. Kane  
 McGuire Woods, L.L.P.  
 Suite 2800  
 Bank of America Corporate Center  
 100 North Tryon Street  
 Charlotte, North Carolina 28202  
 IN ATTENDANCE: Mr. Steven R. Kincaid  
 \*\*\*\*\*

## INDEX

Examination by Mr. Fine

PAGE  
3

## EXHIBITS

|              |  |
|--------------|--|
| PLAINTIFF'S: |  |
| No. 1        | Copy of the Affidavit of Sheila K. Burroughs   |
| No. 2        | Copy of Page from Mr. Kincaid's Review   |
| No. 3        | Copy of Defendant's Responses to Plaintiff's First Set of Interrogatories to Defendant |

MILLER REPORTING SERVICES  
 (704) 543-7103

PAGE 4

Ms. Burroughs - Vol. I

4

1 Q. When were you first employed by the bank?  
 2 A. 1989.  
 3 Q. In what capacity?  
 4 A. I was a marketing research analyst.  
 5 Q. How long were you employed in that capacity?  
 6 A. I think about two years.  
 7 Q. And how did your employment change at that  
 8 point?  
 9 A. After that I was asked to join the branch  
 10 development group.  
 11 Q. The branch development group?  
 12 A. Uh-huh (yes).  
 13 Q. What was your job title?  
 14 A. I don't remember. Branch development analyst.  
 15 probably.  
 16 Q. How long were you in the branch development  
 17 group?  
 18 A. A couple years.  
 19 Q. Okay. Then where did you go?  
 20 A. After branch development I went to. I was a  
 21 quality consultant in the services company.  
 22 Q. A quality consultant to what?  
 23 A. In the services company.  
 24 Q. How long did you do that?  
 25 A. A couple years.

MILLER REPORTING SERVICES  
 (704) 543-7103

MILLER REPORTING SERVICES 704-543-7103

PAGE 33 SHEET 5

DEPOSITION OF SHEILA BURROUGHS  
PAGE 34

Ms. Burroughs - Vol. I

33

1 year conversation, no.  
 2 Q. This is the end of --  
 3 A. End-of-year conversation.  
 4 Q. Yes, okay. Okay. What is the first positive  
   5 feedback that you remember ever giving to  
   6 Mr. Kincaid?  
 7 A. I'm not sure. I know he did a nice job  
   8 managing projects early on.  
 9 Q. Okay. What is the earliest positive feedback  
  10 that you remember?  
 11 A. I remember giving him positive feedback  
  12 regarding a White paper that he wrote on  
  13 margin of error.  
 14 Q. And when did he write this White paper on  
  15 margin of error?  
 16 A. I don't recall specifically, probably in the  
  17 fall of 2002.  
 18 Q. Okay. And was this positive feedback that you  
  19 gave him with regard to the White paper, how  
  20 did you communicate that to him?  
 21 A. Verbally.  
 22 Q. Was anybody else present?  
 23 A. I don't remember specifically. Very likely.  
 24 Q. What did you say to him?  
 25 A. I don't recall the specific words.

Miller Reporting Services  
(704) 543-7103

Ms. Burroughs - Vol. I

34

1 Q. What did you say in substance?  
 2 A. In substance, it was a very useful work and  
   3 written in a way that laypeople could  
   4 understand.  
 5 Q. Who was that White paper circulated to?  
 6 A. Various numbers of the customer satisfaction  
   7 community within the bank.  
 8 Q. Can you name any of them?  
 9 A. I believe Val Galovski would have had a copy.  
 10 my team would have had a copy.  
 11 Q. I'm sorry, Val, what's the last name?  
 12 A. Galovski, G-a-l-o-v-s-k-i-  
 13 Q. Okay. And what position did that person hold?  
 14 A. He was the customer satisfaction and loyalty  
   15 executive for the bank.  
 16 Q. Okay. Who else?  
 17 A. I can -- do you want me to make some guesses?  
 18 I can't remember the actual distribution --  
 19 MR. KANE: I don't want you to  
   20 guess.  
 21 Q. All right. Now, did you set positive comments  
   22 about Mr. Kincaid's White paper from any of  
   23 the people to whom it was circulated?  
 24 A. I don't recall.  
 25 Q. Did you keep a copy of this White paper?

Miller Reporting Services  
(704) 543-7103

PAGE 35

Ms. Burroughs - Vol. I

35

1 A. I would have at the time.  
 2 Q. Would you expect that White paper to be in the  
   3 records of the bank today?  
 4 A. It might be, it might not be.  
 5 Q. Did you ever communicate with Mr. Kincaid by  
   6 e-mail?  
 7 A. Yes.  
 8 Q. Did you ever give Mr. Kincaid any positive or  
   9 negative feedback by e-mail?  
 10 A. I might have.  
 11 Q. Do you remember any occasions on which you  
   12 did?  
 13 A. No.  
 14 Q. What is the earliest documentation of negative  
   15 feedback that you gave to Mr. Kincaid?  
 16 A. His performance review for the first quarter  
   17 2003.  
 18 Q. All right. And that's a performance review  
   19 that's dated April 16 of 2003?  
 20 A. Probably, thereabouts.  
 21 Q. Okay. So Mr. Kincaid starts at the bank in  
   22 August of 2002, and you're saying that the  
   23 first documentation of any negative feedback  
   24 that you gave to Mr. Kincaid is this  
   25 documentation on April 16 of 2003?

Miller Reporting Services  
(704) 543-7103

Ms. Burroughs - Vol. I

36

1 A. Format documentation, yes.  
 2 Q. Well, any other documentation?  
 3 A. I don't have any, no.  
 4 Q. Did you have any at the time?  
 5 A. No.  
 6 Q. Was there any documentation of any positive  
   7 feedback that you had given to Mr. Kincaid at  
   8 any time?  
 9 A. There is some positive feedback in that review  
   10 as well.  
 11 Q. Okay. Is there any documentation of positive  
   12 feedback to Mr. Kincaid prior to that?  
 13 A. No.  
 14 Q. So if I understand this correctly, there is no  
   15 record whatsoever of any feedback that you  
   16 gave to Mr. Kincaid, positive or negative,  
   17 prior to April 16 of 2003?  
 18 A. Right.  
 19 Q. Was it consistent with your practice that  
   20 there be no record of positive or negative  
   21 feedback to an employee for such a long time  
   22 after the employee is hired?  
 23 A. When you say your practice, who do you mean?  
 24 Q. You, Sheila Burroughs.  
 25 A. Me? Yes, unfortunately, it is consistent.

Miller Reporting Services  
(704) 543-7103

PAGE 125

## DEPOSITION OF SHEILA BURROUGHS

PAGE 126

Ms. Burroughs - Vol. I

125

Ms. Burroughs - Vol. I

126

1       ongoing thereafter.  
 2   Q.    Okay. And your team was transitioned to  
 3       Mr. Kotopoulos when?  
 4   A.    In the December time frame. I can't remember  
 5       when the formal date was.  
 6   Q.    Okay. And so how many different employees did  
 7       you discuss with Mr. Kotopoulos at that time?  
 8   A.    Including myself, four.  
 9   Q.    Okay. And so there was you, Mr. Kincaid, and  
 10      who were the other two?  
 11     A.    Susan Haloulos and Alison Hart.  
 12     Q.    Susan Haloulos still works for the bank today,  
 13      right?  
 14     A.    She does.  
 15     Q.    What about Alison Hart?  
 16     A.    She still works here too.  
 17     Q.    Okay. And so you talked to, started talking  
 18      to Alec Kotopoulos regarding you and  
 19      Mr. Kincaid and Ms. Haloulos and Ms. Hart  
 20      starting in around December of 2002 or January  
 21      of 2003?  
 22     A.    Yes.  
 23     Q.    Okay. When is the first time that you  
 24      discussed with Mr. Kotopoulos the possibility  
 25      of terminating Mr. Kincaid's employment?

Miller Reporting Services  
(704) 543-7103

PAGE 127

Ms. Burroughs - Vol

127

Ms. Burroughs - Vol. I

128

1   Q.    Did you have any discussion with  
 2       Mr. Kotopoulos about who was going to take  
 3       over Mr. Kincaid's responsibilities if he was  
 4       terminated?  
 5   A.    No.  
 6   Q.    Why not?  
 7   A.    Because the plan is to make sure that an  
 8       associate understands where they're not  
 9       meeting expectations and to help them to  
 10      improve.  
 11     Q.    Well, wouldn't it have been natural, if you  
 12      were thinking of terminating an employee, to  
 13      talk about how long it would take you to get a  
 14      replacement for that employee?  
 15     A.    No. Not at -- we did not at that point, no.  
 16     Q.    I understand you're saying that you didn't at  
 17      that point. I'm asking you whether wouldn't  
 18      it have been natural to do that?  
 19     A.    I'm not sure I understand the question. We  
 20      didn't.  
 21     Q.    Right. I take it you thought that  
 22      Mr. Kincaid's job, what Mr. Kincaid was being  
 23      asked to do in your group was important,  
 24      right?  
 25     A.    Yes.

Miller Reporting Services  
(704) 543-7103

MILLER REPORTING SERVICES 704-543-7103

1   A.    The possibility?  
 2   Q.    Yes.  
 3   A.    That would have been in the late March, early  
 4       April time frame is the discussion regarding  
 5       the performance is not really, not meeting  
 6       expectations. And I would have discussed  
 7       prior to the memo that we gave him, as that  
 8       was the first step to ensuring that an  
 9       associate understands that their performance  
 10      must improve.  
 11     Q.    Who raised the possibility of terminating  
 12      Mr. Kincaid's employment?  
 13     A.    I don't remember for sure. Maybe Alec.  
 14     Q.    And what did he say on that subject?  
 15     A.    I don't remember his specific words. The  
 16      sentiment was, we need to make sure that he  
 17      meets expectations. And since he's not at  
 18      this point, we need to make sure that he makes  
 19      the relevant, proper improvement in a timely  
 20      way.  
 21     Q.    Okay. And when -- and was the discussion of  
 22      the possibility of terminating Mr. Kincaid's  
 23      employment referred to in any e-mails between  
 24      you and Mr. Kotopoulos?  
 25     A.    don't think so.

Miller Reporting Services  
(704) 543-7103

PAGE 128

Ms. Burroughs - Vol. I

128

1   Q.    You thought that it was integral to the  
 2       operation of your group, right?  
 3   A.    It was.  
 4   Q.    Okay. Who did you get to replace Mr. Kincaid  
 5       after you terminated him?  
 6   A.    Actually, I was not there after that and so I  
 7       do not know.  
 8   Q.    Well, you didn't say you didn't know in your  
 9       answers to interrogatories, did you?  
 10     A.   I don't believe that anyone was hired to take  
 11      on Steve's work.  
 12     Q.   Okay. Now, how is that possible if what  
 13      Mr. Kincaid was doing was so integral to the  
 14      operation of your group? How is it possible  
 15      that you terminated him and then no one was  
 16      hired to take over his responsibilities?  
 17     A.   Well, clearly, when there was not a project  
 18      manager to do the work and I was no longer  
 19      there to direct the work, the work at that  
 20      time was not, apparently, deemed a priority by  
 21      the folks that remained.  
 22     Q.   When is the first time that you had a  
 23      discussion with anybody about your leaving the  
 24      group that you were in?  
 25     A.   don't remember

Miller Reporting Services  
(704) 543-7103

DEPOSITION OF SHEILA BURROUGHS, VOLUME II  
PAGE 17 SHEET 3

Burroughs

17

- 1 Q. In other words, do you talk to people who -- your  
 2 employees, your supervisees may have been working  
 3 with to see how good a job they've been doing?  
 4 A. No. Incentive is based on the performance  
 5 evaluations and the evaluation -- the ongoing  
 6 evaluation of performance, and so all of that has  
 7 already been there. It's not specific to  
 8 incentive. You don't ask the clients should this  
 9 person get an incentive.  
 10 Q. So you've got a record of what your evaluations  
 11 have been, you look at those, you think back on  
 12 the evaluations that you've given this person,  
 13 and you decide what to recommend; is that  
 14 basically it?  
 15 A. Yes, although, I characterized it a little bit  
 16 differently. It's based on the performance that  
 17 you're seeing on a regular basis from that  
 18 person. It's not necessarily looking back on  
 19 formal evaluations done. It's the total picture  
 20 of that person's day-to-day and ongoing  
 21 performance.  
 22 Q. Now, yesterday, I believe you testified that you  
 23 first discussed the possibility of terminating  
 24 Mr. Kincaid with Mr. Kotopoulos in the  
 25 March-April timeframe, March-April 2003

Miller Reporting Services  
(784) 543-7103

Burroughs

18

- 1 timeframe?  
 2 A. I think so, yes.  
 3 Q. When you had that discussion with Mr. Kotopoulos,  
 4 did you discuss with him a period of time that  
 5 you were going to afford to Mr. Kincaid to turn  
 6 his performance around so that he wouldn't be  
 7 terminated?  
 8 A. We had regular checkpoints. We had not  
 9 necessarily established a deadline. The approach  
 10 is typically performance needs to begin to show  
 11 improvement immediately and to sustain that  
 12 improvement.  
 13 Q. So when you had this discussion with  
 14 Mr. Kotopoulos, did you discuss with him how much  
 15 time Mr. Kincaid was going to be afforded to turn  
 16 his performance around?  
 17 A. We may have discussed general timelines, but  
 18 nothing specific that I can recall.  
 19 Q. Okay. Was it common ground between you and  
 20 Mr. Kotopoulos at that point that Mr. Kincaid's  
 21 termination was not a fait accompli?  
 22 A. Let me make sure I got the whole question  
 23 together.  
 24 Q. Let me try it in a somewhat different way.  
 25 A. Sorry.

Miller Reporting Services  
(784) 543-7103

PAGE 19

Burroughs

19

- 1 Q. When you and Mr. Kotopoulos were talking about  
 2 potentially terminating Mr. Kincaid, you both  
 3 recognized that it was still possible for  
 4 Mr. Kincaid to turn things around?  
 5 A. Absolutely. That's the preference, yes.  
 6 Q. And I believe you testified yesterday -- well,  
 7 let me ask it this way. In the first weeks after  
 8 you had your meeting with Mr. Kincaid and you  
 9 gave him the counseling memorandum document that  
 10 we looked at yesterday, in the first weeks after  
 11 that did you see any positive signs with regard  
 12 to Mr. Kincaid's performance?  
 13 A. I saw that he was earnest in wanting to address  
 14 the conversations we'd had. I didn't actually  
 15 see the change in behavior that I was looking  
 16 for.  
 17 Q. And did you tell him that you -- did you give him  
 18 feedback?  
 19 A. Yes, regularly.  
 20 Q. Did there come a time when you became more  
 21 pessimistic about whether Mr. Kincaid was going  
 22 to be able to turn his performance around?  
 23 A. Yes, increasingly so, because I was disappointed  
 24 as it became more and more clear about what the  
 25 issues were that I did not see a change in

Miller Reporting Services  
(784) 543-7103

Burroughs

20

- 1 behavior and change in performance. So, yes, as  
 2 time went by, weeks and then months, much more  
 3 pessimistic that he was able to make the changes  
 4 that I was asking for.  
 5 Q. Was there some event that occurred which made  
 6 you -- which persuaded you we've got to terminate  
 7 him?  
 8 A. Are you asking a timing question or just, okay,  
 9 something happened and that means we have to  
 10 terminate him? There wasn't an event that said  
 11 that event causes me to say that he's just not  
 12 going to get better. It's the culmination of the  
 13 lack of improvement seen across those months.  
 14 Q. All right. Can you provide any insight as to why  
 15 June 13th was the date at which you decided that  
 16 that was the day he should be terminated?  
 17 A. I had a conversation with Alec and Alec asked,  
 18 "Do you believe that performance at this point is  
 19 going to improve," and I indicated that I hadn't  
 20 seen any evidence that showed that more time was  
 21 going to be beneficial. And he said, "Is there  
 22 any reason to continue this?" And I said, "There  
 23 is not." So he said, "Let's go ahead and do  
 24 this."  
 25 Q. I'll show you what was marked as Montgomery

Miller Reporting Services  
(784) 543-7103

PAGE 1 SHEET 1

PAGE 2

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

STEVEN R. KINCAID, Plaintiff,  
 vs. CIVIL ACTION NO.  
 BANK OF AMERICA CORPORATION, 84-11522-WGY  
 Defendant.

DEPOSITION  
OF  
SHEILA BURROUGHS  
(VOLUME III)

At Charlotte, North Carolina  
 October 19, 2005

Reporter: Christine A. Taylor  
 Notary Public

PAGE 3

## Burroughs - Volume III

3

1 This is the continued deposition of SHEILA  
 2 BURROUGHS, taken in accordance with the Federal Rules of  
 3 Civil Procedure in connection with the above case.  
 4 Pursuant to Notice, this deposition is being taken  
 5 in the Law Offices of McGuireWoods, LLP, Suite 2900,  
 6 100 North Tryon Street, Charlotte, North Carolina,  
 7 beginning at 1:30 p.m. on October 19, 2005, before  
 8 Christine A. Taylor, Notary Public.

10 SHEILA BURROUGHS, upon first being duly  
 11 sworn, further testified as follows:

## CONTINUED EXAMINATION BY MR. FINE

14 Q. Ms. Burroughs, I'm going to show you a document  
 15 that was marked as Exhibit 1 in Mr. Kotopoulos's  
 16 deposition the other day. And I want you to  
 17 first look at the second page of the document.  
 18 First of all, do you recognize what this document  
 19 is?  
 20 A. I've not seen it before, but I recognize what it  
 21 is.  
 22 Q. What is it?  
 23 A. It's a summary of -- this particular one -- of a  
 24 job offer.  
 25 Q. Okay. And this particular job offer refers to

Miller Reporting Services  
 (704) 543-7103

## Burroughs - Volume III

2

APPEARING  
 For the Plaintiff: DAVID J. FINE, ESQ.  
 Law Offices of David J. Fine  
 Suite 400  
 Three Center Plaza  
 Boston, Massachusetts 02108  
 For the Defendant: SLOBAN M. SWEENEY, ESQ.  
 Edwards & Angell, LLP  
 101 Federal Street  
 Boston, Massachusetts 02110

\*\*\*\*\*

## INDEX

PAGE

Continued Examination By Mr. Fine

3

## EXHIBITS

PAGE

Burroughs 7 Notes from Personnel Center

37

(Exhibit retained by counsel.)

Miller Reporting Services  
 (704) 543-7103

PAGE 4

## Burroughs - Volume III

4

1 you; correct?  
 2 A. Yes.  
 3 Q. Okay. And so how do you interpret what is  
 4 reported here?  
 5 A. That for requisition number 32661 for Market  
 6 Information Manager II an offer was extended to  
 7 me June 13th transferring me from one area within  
 8 the bank to another, and the status is updated to  
 9 accepted on June 23rd.  
 10 Q. Okay. And the position that was offered to you  
 11 on June 13, 2003, was that a position of Market  
 12 Information Manager II?  
 13 I'm just asking, the heading there is offers  
 14 for requisition, and then Market Information  
 15 Manager II?  
 16 A. I'm interpreting this document the same as you  
 17 are, yes.  
 18 Q. All right. And what was that position?  
 19 A. That was a position within customer service and  
 20 support.  
 21 Q. Okay. I'd now like you to go to the last page of  
 22 this document, the third page. Do you recognize  
 23 what this page is?  
 24 A. It appears to be a summary of more detail for  
 25 that requisition.

Miller Reporting Services  
 (704) 543-7103

DEPOSITION OF SHEILA BURROUGHS - VOL III  
PAGE 5

Burroughs - Volume III

5

- 1 Q. Do you know who Megan Wilson is?  
 2 A. It indicates she's a recruiter.  
 3 Q. Was she a recruiter that you dealt with?  
 4 A. Probably. I don't remember her specifically  
 5 though.  
 6 Q. Do you know who Mark McCue is?  
 7 A. Yes.  
 8 Q. Who is Mark McCue?  
 9 A. He was the hiring manager for that job.  
 10 Q. And then there's an entry dated -- initiated  
 11 May 27, 2003?  
 12 A. Uh-huh.  
 13 Q. What is that?  
 14 A. I'm going to assume from this that that was the  
 15 date that Mark opened the job requisition.  
 16 Q. And what does that mean, "opened the job  
 17 requisition"?  
 18 A. It means that's the date that he would have  
 19 formally opened that position for people to post  
 20 for, I believe, based on what we're looking at  
 21 here.  
 22 Q. Now if you'll turn to the very first page of this  
 23 document. If you look at the last entry, there's  
 24 an entry for 32661, Market Information Manager  
 25 II; do you see that?

Miller Reporting Services  
(704) 543-7103

PAGE 7

Burroughs - Volume III

7

- 1 THE WITNESS: Yes.  
 2 BY MR. FINE:  
 3 Q. Okay. When was it that you first considered  
 4 getting another job within the bank?  
 5 A. I'm not sure.  
 6 Q. None of these documents tell you when that was;  
 7 is that right?  
 8 A. None of these documents tell me when I first  
 9 considered getting a new job, no.  
 10 Q. Okay. Before this particular job was offered to  
 11 you, what did you need to do?  
 12 A. I don't understand the question.  
 13 Q. Did you have to let somebody know that you were  
 14 interested in the job?  
 15 A. Okay. I understand that part. So let me --  
 16 going back, before it was offered to me what did  
 17 I do? Can you repeat the question for me?  
 18 Q. It looks like what happened was that this was a  
 19 job that was posted on May 27, 2003, and so  
 20 sometime after it was posted you indicated that  
 21 you were interested in it; is that fair?  
 22 A. Yes.  
 23 Q. And did you go in for an interview with somebody?  
 24 A. Yes.  
 25 Q. Who did you interview with?

Miller Reporting Services  
(704) 543-7103

MILLER REPORTING SERVICES 704-543-7103

Burroughs - Volume III

6

- 1 A. Uh-huh.  
 2 Q. And then there's a status that says deactivated;  
 3 do you see that?  
 4 A. Yes.  
 5 Q. What does that signify to you?  
 6 A. I don't know what it means.  
 7 Q. All right. Might it possibly be that since that  
 8 job was offered to you on June 13, 2003 that they  
 9 then removed it from a general posting of some  
 10 sort?  
 11 A. It might.  
 12 MS. SWEENEY: Objection.  
 13 BY MR. FINE:  
 14 Q. That might -- I think Ms. Sweeney is objecting  
 15 for the record. So do you understand the --  
 16 A. Do you want me to answer it?  
 17 MS. SWEENEY: You can answer it. I'm  
 18 objecting for the record.  
 19 THE WITNESS: Okay. It might.  
 20 BY MR. FINE:  
 21 Q. Now, to summarize, if I might, these documents  
 22 seem to indicate that a job was posted on May 27,  
 23 2003, it was offered to you on June 13, 2003, and  
 24 you accepted it on June 23, 2003; is that fair?  
 25 MS. SWEENEY: Objection.

Miller Reporting Services  
(704) 543-7103

PAGE 8

Burroughs - Volume III

8

- 1 A. Mark McCue.  
 2 Q. Anyone else?  
 3 A. I don't think so.  
 4 Q. In addition to interviewing for it, did you need  
 5 to submit a written application?  
 6 A. Yes. That's the formal process, to post within  
 7 the system. So it's written to the degree it's  
 8 on-line.  
 9 Q. Was this the first job outside of the customer  
 10 satisfaction unit that you had applied for?  
 11 A. No.  
 12 Q. When was the first job that you had applied for?  
 13 A. I don't remember right off.  
 14 Q. Do you recall whether there was more than one job  
 15 that you had applied for before this one?  
 16 A. I don't remember. There may have been.  
 17 Q. Do you remember approximately when you started  
 18 looking?  
 19 A. No. Maybe in May. I don't remember  
 20 specifically.  
 21 Q. Do you associate it with any kind of event or  
 22 circumstance?  
 23 A. No.  
 24 Q. I'll show you what was marked as Exhibit 2 to  
 25 Mr. Kotopoulos's deposition. And, first of all,

Miller Reporting Services  
(704) 543-7103

## Burroughs - Volume III

9

1 you see that these three pages refer to Allison  
 2 Hart?  
 3 A. Yes.  
 4 Q. I'd like you to turn to the last page, the one  
 5 that bears the Bates number Bank of America 671.  
 6 And what does this page signify?  
 7 A. This appears to be an offer made to Allison for a  
 8 Market Product Manager I Job on June 5th of 2003.  
 9 Q. And when was -- Is there any indication of when  
 10 her application was accepted?  
 11 A. Well, again the status here says accepted. I'm  
 12 not familiar with the system enough to know. It  
 13 appears that me that that means she accepted the  
 14 position on June 5th, that her acceptance of the  
 15 position was entered into the system on that day.  
 16 I don't know when it means she actually accepted.  
 17 Q. Please turn to the previous page. Do you know  
 18 who Peter Sims is?  
 19 A. According to this he's a recruiter. I don't know  
 20 him myself.  
 21 Q. Do you know Rebecca Nellie?  
 22 A. I've spoken with her once or twice. I don't know  
 23 her well.  
 24 Q. Who is she?  
 25 A. She was the person who was hiring for the

Miller Reporting Services  
 (704) 543-7103

PAGE 11

## Burroughs - Volume III

11

1 new position in the bank, were you contacted as a  
 2 reference for her?  
 3 A. I don't remember.  
 4 Q. Okay. Do you recall approximately when was the  
 5 first time that Allison talked to you about  
 6 wanting to go to a different part of the bank?  
 7 A. I don't remember, no.  
 8 Q. Do you recall whether it was before or after your  
 9 beginning to look yourself?  
 10 A. When she expressed interest in doing something  
 11 else or when she began looking for a particular  
 12 next position? They're very different.  
 13 Q. Let's break it down. Did she express interest  
 14 before you started looking?  
 15 A. Yes.  
 16 Q. Did she start looking before you started looking?  
 17 A. I don't know.  
 18 Q. Do you recall approximately how much before you  
 19 started looking she expressed interest?  
 20 A. I don't remember. Her interest was over a number  
 21 of months because, again, in normal career, you  
 22 know, development kinds of conversations, she  
 23 expressed interest that she would be happy to try  
 24 other things. So her interest initially  
 25 expressed in an interest sort of way, yes, I

Miller Reporting Services  
 (704) 543-7103

## Burroughs - Volume III

10

1 position Allison took.  
 2 Q. There's an entry here for date initiated,  
 3 April 9, 2003. What does that signify to you?  
 4 A. To me, that signifies this requisition was opened  
 5 in the system or entered into the system on that  
 6 day.  
 7 Q. Okay. Did there come a time when Allison Hart  
 8 spoke to you about wanting to look for another  
 9 position in the bank outside of the customer  
 10 satisfaction unit?  
 11 A. Yes.  
 12 Q. When was that?  
 13 A. I don't remember.  
 14 Q. Do you remember anything of what she said and  
 15 what you said on that subject?  
 16 A. Career development is a topic that we discussed  
 17 on a regular basis with associates. So I knew  
 18 that her ambition was to do more and different  
 19 work than she had been doing. And I recall that  
 20 essentially her feeling was that she had pretty  
 21 much learned what she could learn from managing  
 22 the program that she was managing, the survey,  
 23 and the other work that she was doing, and she  
 24 was ready to learn something different.  
 25 Q. And when Allison was being considered for this

Miller Reporting Services  
 (704) 543-7103

PAGE 12

## Burroughs - Volume III

12

1 don't think I necessarily want to do market  
 2 research for my entire career, I would like to  
 3 learn different areas of the bank was expressed  
 4 at various intervals.  
 5 Q. In the first several months of 2003 what was the  
 6 market satisfaction unit working on?  
 7 A. The market satisfaction --  
 8 MS. SWEENEY: Objection.  
 9 THE WITNESS: -- unit? Can you clarify who  
 10 you mean?  
 11 BY MR. FINE:  
 12 Q. What was the unit that you were the head of?  
 13 A. The customer satisfaction research group.  
 14 Q. Thank you. What was the customer satisfaction  
 15 research group working on in the first several  
 16 months of 2003?  
 17 A. All of it? We --  
 18 Q. Can you give an overview of what you were working  
 19 on?  
 20 A. Sure. We, as a team, managed the customer  
 21 satisfaction and loyalty barometer survey. As a  
 22 team, we managed the banking center satisfaction  
 23 survey. We facilitated the customer delight  
 24 community of practice. We would have been  
 25 working on sympathizing results of the various

Miller Reporting Services  
 (704) 543-7103

## DEPOSITION OF SHEILA BURROUGHS - VOL III

PAGE 13

## Burroughs - Volume III

13

1       customer satisfaction surveys. We would have  
 2       been working on, I think, banking center  
 3       incentive design. We would have been working, I  
 4       think, on the loyalty measurement development.  
 5       We were working on a project to identify how best  
 6       to help people from a financial perspective when  
 7       they're moving. And I'm sure there were other  
 8       projects, I just don't recall specifically for  
 9       all those months.

10      Q.     Okay.

11      A.     We were working on the valuation of work, the  
 12       customer satisfaction valuation work.

13      Q.     Of these various things that your unit was  
 14       working on, did you consider any of them to be of  
 15       primary importance or of greater importance than  
 16       the other things?

17      A.     No.

18      Q.     Okay. I take it that as the head of this unit  
 19       you felt responsibility for how the unit as a  
 20       whole was performing with regard to the various  
 21       things that it was doing. Is that fair?

22      A.     Yes.

23      Q.     Okay. Were any of the projects that your unit  
 24       had been working on coming to completion in the  
 25       first months of 2003?

Miller Reporting Services  
(704) 543-7103

PAGE 15

## Burroughs - Volume III

15

1      A.     Yes.  
 2      Q.     When was that work completed?  
 3      A.     Creating it was completed in 2000, I think. But  
 4       it is an ongoing survey, we're continually asking  
 5       customers questions and continually analyzing the  
 6       results.

7      Q.     Was there any piece of that work that was  
 8       completed after 2000?

9      A.     Can you clarify what you mean by "that work"?

10     Q.     The work in connection with the customer  
 11       satisfaction barometer and survey.

12     A.     Yes. Given that it was ongoing, the gathering of  
 13       interviews and analyzing of information is  
 14       ongoing.

15     Q.     Okay.

16     A.     It's hard when you use the word "completed,"  
 17       because the work to create it and develop it was  
 18       completed in 2000 and 2001. After that it's an  
 19       ongoing process that you gather more information  
 20       and analyze more information. That, I guess you  
 21       could say is completed every quarter.

22     Q.     At the end of a quarter did your unit produce a  
 23       report on what you had processed during that  
 24       quarter?

25     A.     Yes.

Miller Reporting Services  
(704) 543-7103

## Burroughs - Volume III

14

1      A.     The nature of a lot of our work is ongoing, so  
 2       for those pieces, no. And, no, I don't believe  
 3       anything was coming to completion.

4      Q.     Okay. Did you have any qualms in deciding to  
 5       move to another part of the bank that you were  
 6       leaving unfinished work that you had been  
 7       supervising?

8      A.     No.

9      Q.     Why not?

10     A.     If you waited to finish all the work you were  
 11       doing before you left a job, you would never  
 12       leave a job or grow or develop. So it is normal  
 13       practice and normal for me that when you're ready  
 14       to move on to the growth opportunity you do  
 15       knowing that there are other people who will take  
 16       on what you've been doing.

17     Q.     What is the work that your unit completed that  
 18       you were most proud of?

19     A.     We developed the barometer.

20     Q.     And by barometer you mean what?

21     A.     The customer satisfaction and loyalty barometer  
 22       survey. I'm also most proud of the development  
 23       of community of practice that I facilitated.

24     Q.     Now the first one that you mentioned, the  
 25       customer satisfaction barometer, was that?

Miller Reporting Services  
(704) 543-7103

PAGE 16

## Burroughs - Volume III

16

1      Q.     Okay. And so you would have completed a  
 2       report -- well, how much after the end of a  
 3       quarter would such a report be prepared?

4      A.     It varied. But typically sometime in the month  
 5       following the end of a quarter.

6      Q.     So you would have completed a report in April  
 7       with regard to the first quarter of 2003?

8      A.     Yes.

9      Q.     But as to the second quarter of 2003, that  
 10       quarter would not have ended until June 30th and  
 11       you left your unit before that report was done;  
 12       right?

13     A.     I don't remember. I probably did.

14     Q.     All right. Maybe I should go back and ask you  
 15       with regard to the first document that we were  
 16       looking at where it says that you accepted this  
 17       position June 23, 2003 --

18     A.     Uh-huh.

19     Q.     -- does that mean you actually left the customer  
 20       satisfaction unit at that time?

21     A.     No.

22     Q.     When did you actually leave the unit?

23     A.     My official start date in my new job I believe  
 24       was July 15th.

25     Q.     Okay. And was that date chosen in connection --

Miller Reporting Services  
(704) 543-7103